IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

Crl.MC.No. 5080 of 2003(D)

ST.410/2001 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR
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PETITIONER: ACCUSED NOS.3 & 4:
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1. M.KHADER IBRAHIM,
S/O. N.V.K.MUHAMMED SULTHAN, RAVUTHAR, 13-14,
EAST CAR STREET, DINDIGAL-624001.

2. M.RAJA MUHAMMED, S/O. N.V.K.MUHAMMED,
57 NEHRUJI NAGAR, DINDIGAL-624001.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: COMPLAINANT AND STATE:
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1. JOSE C.L.,
FOOD INSPECTOR, THRISSUR CORPORATION,
M.O.ROAD, THRISSUR.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

BY ADV. SRI.V.G.SANKARAN
SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 5080 OF 2003

Dated this the 30th day of November 2006

ORDER

The petitioners, who are accused persons 3 and 4 in S.T. No. 410/2001 in the file of Chief Judicial Magistrate, Thrissur, has sought for setting aside the proceedings against them on the ground that they are Directors of the particular manufacturing company and that the complaint did not contain averments in terms of section 17(4) of the PFA Act. Further the company has nominated a person vide Annexure 2 under section 17(2) and hence the prosecution will lie only against the nominee. The counsel has also relied on the decision reported in **Govinda Rao v. Food Inspector** (2002 (1) KLT 843) to fortify his contentions.

2. In the circumstances and in view of the explanation to section 17(2) and rule 12(b) of the P.F.A. Rules and in absence of specific allegations in consonance with section 17(4) and in view of Annexure 2, the nomination, I find that the prosecution of petitioners who are accused 3 and 4 would not maintainable.

Considering the fact that the nomination has to be specifically as per the terms of Rule 12(b) the matter can be considered by the court below.

In the circumstances, the petitioners are directed to apply before the court below for discharge. The personal appearance of the petitioners/accused 3 and 4 is not to be insisted. The petitioners shall apply for exemption from appearance and the same shall be allowed till the discharge petition is disposed of. The petitioners shall apply for discharge producing the relevant documents. The court will dispose of the same on merits. The prosecution will be at liberty to initiate proceedings against the nominee as per law. The Crl. M.C is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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